

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Amendments of parts 32, 36, 61
64, and 69 of the Commission's
Rules to Establish and Implement
Regulatory procedures for Video
Dialtone Service

RM 8221

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GTE's COMMENTS

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its affiliated domestic
telephone operating companies

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TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	ii
BACKGROUND	1
DISCUSSION	2
1. The Petition, which is asking for the same set of issues to be considered in numerous proceedings, should be dismissed	2
2. Petitioners' arguments have already been carefully considered, and are being further considered in ongoing proceedings.....	3
3. The Commission should not delay action on video applications.....	9
4. The Commission should put aside NCTA's protection of monopolies and CFA's retrogressive argumentation	9

SUMMARY

1. The Petition is asking for the same set of issues to be considered in numerous, duplicative proceedings. Even more pernicious is Petitioners' demand for complete paralysis while all these proceedings are under way. The Commission should not permit its pro-competitive initiative to be obstructed.
2. Petitioners' arguments have already been carefully considered, and are being further considered in ongoing proceedings.
3. The Commission has wisely adopted a constructive and forward-looking policy. It should proceed with its implementation without delay.

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GTE's COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE") offer their comments in response to the Commission's Public Notice¹ on a Petition for Rulemaking ("Petition") jointly filed, April 8, 1993, by the Consumer Federation of America ("CFA") and the National Cable Television Association ("NCTA") (collectively "Petitioners"). The Petition asks the Commission: (i) to commence a rulemaking to establish separations, cost accounting, and cost allocation rules for video dialtone service, (ii) to establish a Federal-State Joint Board to recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone, and (iii) meanwhile, to suspend acceptance or processing of all video dialtone applications.

BACKGROUND

In the *Video Dialtone Order*², the Commission modified its rules to enable local telephone companies to participate in the video marketplace through video dialtone.

¹ Pleading Cycle Established for Joint Petition of CFA and NCTA for Rulemaking and Request for Establishment of a Joint Board, Public Notice, DA 93-463, April 21, 1993.

This decision is designed to advance the Commission's "overarching goals of creating opportunities to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public."³ The Commission took "the initial steps to implement video dialtone by amending our rules to permit provision of video dialtone services and establishing a general regulatory framework to govern both common carriage and non-common carrier video dialtone service."⁴

DISCUSSION

1. The Petition, which is asking for the same set of issues to be considered in numerous proceedings, should be dismissed.

Pending before the Commission is the Petitioners' joint petition for reconsideration of the *Video Dialtone Order*. That filing covers the same ground as the Petition. In substance, the Petitioners are raising the same set of questions by still another pleading.

Moreover, the Commission is being asked to interpose a new set of complex proceedings before implementation of its important decision to "remove unnecessary regulatory barriers in order to permit telephone companies to provide video dialtone in response to marketplace forces."⁵ Petitioners insist that issues addressed at length in comments filed by the same parties in D.87-266 – jurisdictional separations, cost allocation, pricing, and consumer safeguards – and addressed at length by the same

² *Telephone Company/Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, CC Docket No. 87-266 ("D.87-266"), Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rulemaking ("Video Dialtone Order"), 7 FCC Rcd 5781 (1992), petitions for reconsideration pending.

³ *Video Dialtone Order*, 7 FCC Rcd at 5783.

⁴ *Id.*

⁵ *Id.*

parties on reconsideration in D.87-266, issues that will be further considered by the Commission in Section 214 proceedings, must be examined in **still more proceedings**. If the Petition were granted, the same subject matter would be considered in: (i) D.87-266; (ii) Section 214 proceedings for each and every applicant; (iii) RM-8221; and (iv) a Joint Board proceeding. Such overlapping and duplicative proceedings are not only unnecessary; they would represent a waste of Commission and industry resources.

Even more pernicious is Petitioners' demand for complete paralysis while all these proceedings are under way. The Commission should not permit its pro-competitive initiative to be obstructed by proposals devoid of merit.

In summary: The Commission should dismiss the Petition.

2. Petitioners' arguments have already been carefully considered, and are being further considered in ongoing proceedings.

The Commission was correct in choosing to rely heavily upon existing regulatory structure and safeguards in order to implement video dialtone. In adopting a two-level regulatory framework, the FCC determined: "[t]he public interest is significantly served by integrating video dialtone into this existing framework rather than by the adoption of a wholly new regulatory scheme."⁶ The framework consists of a basic platform offering regulated common carriage services provided under tariff and subject to nondiscrimination requirements⁷ and a second level, offering enhancements to the basic platform, including enhanced and other non-common carrier services, subject to the full panoply of existing regulations.⁸

⁶ *Id.* at 5811.

⁷ *Id.* at 5827.

⁸ *Id.* at 5811.

In order to promote competition and further their infrastructure goals, the Commission requires telephone companies offering video dialtone to implement a

video dialtone service. The additional requirements adopted within the order sufficiently addressed the public interest goals the agency seeks to achieve.

The Commission found "that the concerns of potential discriminatory conduct and improper cross-subsidization are similar for common carrier services, whether voice, data, or video."¹³ Already in existence and actively applied by the Commission is an entire network of protections against anticompetitive conduct. This includes Part 32 of the Commission's Rules, which contains the Uniform System of Accounts that was completely rewritten in order to fit a competitive environment.¹⁴ In CC Docket No. 86-111 ("D.86-111"), a new cost accounting system was imposed with particular stress on affiliate transactions and preventing subsidization of a company's unregulated business activities. Every sizable telephone company in the country has submitted a Cost Accounting Manual ("CAM") for FCC approval under the D.86-111 Rules. Compliance audits conducted by public accounting firms assure conformity with the CAMs. Detailed cost data is reported to the Commission through the Automated Reporting and Management Information System ("ARMIS"). Open Network Architecture ("ONA") requirements represent additional safeguards applicable to the Bell Operating Companies ("BOCs").¹⁵ The Pole Attachment Act assures reasonable pole attachment rates.¹⁶ Competitive access to the home is ensured by the Cable Communications Policy Act of 1984.¹⁷ Numerous protections were built into the FCC's Price Cap

¹³ *Id.* at 5828.

¹⁴ *Revision of the Uniform System of Accounts for Class A and Class B Telephone Companies*, CC Docket No. 78-196, 51 Fed. Reg. 43498 (December 2, 1986).

¹⁵ As noted in GTE's Comments (at 42-48) filed February 22, 1993 in *Application of Open Network Architecture and Non-discrimination Safeguards to GTE Corporation*, CC Docket 92-256, GTE has voluntarily implemented safeguards that assure, insofar as a GTE enhanced service provider competes with other enhanced service providers, there is no favoritism.

¹⁶ 47 U.S.C. Section 224.

¹⁷ 47 U.S.C. Section 541(a)(2).

program to guard against any possibility of abuse.¹⁸ Telephone companies' tariffed offerings are subject to relentless scrutiny demanded by rivals or competitors that are themselves subject to little or no regulation. The Commission continues to consider complaints filed under Section 208 of the Communications Act.¹⁹ Then there are many, and increasing, safeguards imposed by state regulators. Finally, the BOCs are controlled by the Modified Final Judgment, GTE by the GTE Consent Decree. But, Petitioners insist, this is not enough. Still more restrictions are required.

Petitioners' arguments have been carefully considered in the course of a five-year FCC proceeding. The Commission concluded:

[E]xisting safeguards against discrimination and cross-subsidization in the provision of basic services by the local telephone companies, in conjunction with the additional protection of a first level nondiscriminatory video dialtone platform as required under the two-level regulatory framework, should effectively protect against potential anticompetitive conduct by local telephone companies providing video dialtone.²⁰

The *Video Dialtone Order* makes it clear that the important existing protections will apply to video dialtone offerings. Indeed, another level of protection is to be assured by Section 214 consideration: "We emphasize ... that we intend to reassess the adequacy of our existing safeguards at such time as local telephone companies present us with specific video dialtone proposals in connection with a Section 214

¹⁸ See *Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6835-36 (subsequent citations omitted).

¹⁹ See for example: *Allnet Communication Services, Inc. v. Illinois Bell Tel Co.*, 1993 FCC LEXIS 2110.

²⁰ *Video Dialtone Order*, 7 FCC Rcd at 5827.

authorization certificate."²¹ The FCC's action approving Bell Atlantic's application demonstrates that Section 214 review will not be perfunctory.²²

The Commission was careful to identify protections against discrimination and cross-subsidization:

[T]he basic common carrier platform will be provided by the local telephone companies under tariff and subject to Title II nondiscrimination requirements. By requiring local telephone companies that offer video dialtone to also provide such a nondiscriminatory platform if they offer enhanced and/or nonregulated services, we find that the risk of anticompetitive conduct will be minimized.²³

Nonetheless, the Commission went further by applying fully to the BOCs' furnishing of video dialtone the ONA-related safeguards²⁴; and by emphasizing "that under the two-level regulatory framework, all service providers will be entitled to access to the video dialtone platform on a tariffed, nondiscriminatory basis"²⁵, and "that the basic service elements of the video dialtone platform must be offered on an unbundled basis" so that "any service provider that desires to offer a video gateway (or other enhanced service) in competition with a local telephone company-provided gateway will be able to do so on an equal basis with the local telephone company."²⁶

The Commission said: "[W]e stress that by choosing initially to rely upon existing safeguards, we do not intend to minimize our concern about anticompetitive

²¹ *Id.*

²² *The Chesapeake and Potomac Telephone Company of Virginia for Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, to Construct, Operate, Own, and Maintain Facilities and Equipment to Test a New Technology for Use in Providing Video Dialtone Within a Geographically Defined Trial Area in Northern Virginia*, Order and Authorization, FCC 93-160 (March 23, 1993).

²³ *Video Dialtone Order*, 7 FCC Rcd at 5827.

²⁴ *Id.* at 5830.

²⁵ *Id.* at 5831.

²⁶ *Id.*

behavior."²⁷ "[W]e here clarify," announced the Commission, "that we will be vigilant in our efforts to identify possible anticompetitive conduct in connection with video dialtone offerings."²⁸ And it added:

Further, we note that we are prepared to impose additional safeguards tailored to specific video dialtone proposals in connection with the Section 214 certification process if necessary and should a carrier fail to comply with the Section 214 requirements, the Commission can take appropriate enforcement action.²⁹

Over and above all of these safeguards, the Commission added a provision for a three-year review:

Moreover, in recognition of the evolutionary nature of the technology and the nascent status of services which could be offered by the local telephone companies and others in connection with video dialtone, we believe that a future review of our rules and regulatory framework is warranted. Consequently, beginning in three years from the effective date of this order, we will undertake a review of our rules and regulatory framework in order to reassess their continuing effectiveness in light of the actual development of video dialtone.³⁰

This review "will carefully examine the success of our rules in promoting the public interest goals we have identified, the adequacy of our existing safeguards to prevent anticompetitive conduct, and any other rule changes which might be required in order to serve the public interest."³¹

Still Petitioners insist this is not enough. Hold up any grant of video dialtone authorizations, they say, until completion of still another complex set of proceedings -- duplicating what has already been considered and what is even now in process. These demands amount to simple obstruction.

²⁷ *Id.* at 5832.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

In summary: With Petitioners' arguments already carefully considered, and being further considered in ongoing proceedings, the Petition merits swift rejection.

3. The Commission should not delay action on video applications.

The Petition (at 5) asks the Commission to hold all pending video dialtone applications in abeyance and refrain from accepting any new video dialtone applications until completion of the complex additional proceedings sought by Petitioners.

Petitioners have made no showing whatever of any reasons that would support such extraordinary relief. The Commission has wisely adopted a constructive and forward-looking policy. It should proceed with its implementation without delay.

4. The Commission should put aside NCTA's protection of monopolies and CFA's retrogressive argumentation.

NCTA's purpose in filing the Petition is clear: by delaying the Commission's initiative, the monopoly enjoyed by the NCTA membership would be protected. Why does CFA -- so often an adversary of NCTA on other fronts -- join with NCTA in filing this duplicative and obstructive pleading that argues and re-argues points the Commission has carefully considered?

CFA appears to be saying there can never be sufficient protection from cross-subsidy. Would what they are seeking under the rubric of protection against cross-subsidy amount to preclusion of telephone companies from their technological future? Has CFA persuaded itself that the interests of ratepayers are best served by confining telephone companies within the narrowest technical and operational limits? Is CFA saying: *Telephone companies must provide nothing but POTS?*

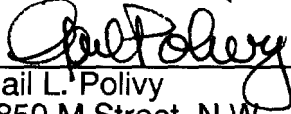
By contrast, the Commission has no intention of cutting off technological and competitive developments that will make available to the public the limitless possibilities offered by computers combined with fiber optics combined with imagination. This

philosophy follows the Congressional direction which emphasizes this aspect of the Commission's role.³² The *Video Dialtone Order* puts aside NCTA's demands for the protection of monopolies and CFA's retrogressive argumentation. The order adopts a carefully developed plan with more than ample protection for the ratepayer against cross-subsidy. The Commission should proceed with its plan without delay.

Respectfully submitted,

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³² 47 C.F.R. Section 157.

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Comments" have been mailed by first class United States mail, postage prepaid, on this 21st day of May, 1993 to the following parties:

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